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5 *Court-Appointed Receiver*

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12 UNITED STATES DISTRICT COURT
13 CENTRAL DISTRICT OF CALIFORNIA

14 SECURITIES AND EXCHANGE
COMMISSION,

15 Plaintiff,

16 v.

17 PLCMGMT LLC, dba PROMETHEUS
18 LAW, JAMES A. CATIPAY, and
DAVID A. ALDRICH,

19 Defendants.

Case No. 2:16-cv-02594-TJH (FFMx)

**MEMORANDUM OF POINTS
AND AUTHORITIES IN
SUPPORT OF RECEIVER'S
MOTION FOR APPROVAL OF
PROCEDURES FOR FINAL
DETERMINATION OF
INVESTOR CLAIMS AND
FIRST INTERIM DISTRIBUTION
TO INVESTORS**

Judge: Hon. Terry J. Hatter, Jr.
Ctrm.: 9B
Date: UNDER SUBMISSION
Time: UNDER SUBMISSION

1 **I. Introduction**

2 Thomas W. McNamara, as the Court-appointed Receiver of Defendant
3 PLCMGMT LLC, dba Prometheus Law (“Receiver”),¹ seeks the Court’s approval
4 of “Procedures for the Receiver’s Final Determination of Investor Claims and Pro
5 Rata Distributions to Investors with Approved Claims,” attached as Exhibit A
6 (“Claims Procedures”), and approval to make a first interim distribution to
7 investors with approved claims, pro rata, totaling \$1,056,435.

8 The Receiver had previously deferred confirmation of a claims procedure
9 and approval of a first interim distribution as the funds available for a distribution
10 were not adequate relative to the administrative expenses required. In the Third
11 Status Report filed August 29, 2017 (ECF No. 99), the Receiver indicated that
12 funds from the potential sale of the Flower Street Condo, combined with other
13 current assets, should generate enough funds to commence interim distributions.

14 The sale of the Flower Street Condo was approved by the Court on
15 November 13, 2017 (ECF No. 105) and completed on November 21, 2017 with net
16 proceeds to the receivership of \$968,993.13. As such, the receivership may now
17 proceed with a first interim distribution and a final determination of investor
18 claims.

19 **II. The Claims Universe**

20 From the outset of the receivership, the Receiver has maintained an investor
21 database derived from our comprehensive review of the internal records of
22 PLCMGMT LLC, dba Prometheus Law (“Prometheus”) and on-going
23 communications with investors. In December 2016, the Receiver launched a mass
24 mailing (by U.S. Mail and email) to all identified investors which provided each
25 investor a report of what the receivership records indicate had been invested in
26 Prometheus. We asked any investor who disputed the reported amount to contact

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28 ¹ Mr. McNamara was appointed Receiver by the Preliminary Injunction
entered April 26, 2016 (ECF No. 20).

1 us immediately. The responses were sparse and any corrections were *de minimus*,
2 most relating to details of IRA accounts. We have also regularly updated our
3 records to reflect address changes as we have received them.

4 Through this process, the Receiver has identified the universe of investor
5 victims to be 251 investors (122 of whom invested through IRA accounts) with net
6 losses of \$11.7 million.² Given the advanced state of this database, the Claims
7 Procedures described herein will primarily serve to confirm that universe of
8 investors and provide a final opportunity for those investors to identify any
9 possible omissions or errors and/or to update their contact information as
10 necessary.

11 **III. The Proposed Procedures**

12 The Claims Procedures set forth in Exhibit A have four basic components,
13 which can be summarized as follows:

14 **A. Notice.** The Receiver shall provide notice to investors by posting a
15 Notice on the Receiver's website, along with copies of the Claims
16 Procedures and the Court's Order. The same Notice shall also be sent
17 to investors by U.S. Mail and email.

18 **B. Preliminary Schedule.** The Receiver shall immediately post on the
19 Receiver's website the Preliminary Schedule of Approved Claims
20 based on the Receiver's detailed database and calculated on the
21 investor's net stripped capital (cash in less cash out). Any investor
22 who disputes the indicated amount of their investment may object in
23 writing to the Receiver.

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27 ² These conclusions were reported in detail in our Second Status Report (filed
28 April 3, 2017, ECF No. 80) and have been the basis for the disgorgement amounts
ordered against James Catipay and David Aldrich.

1 **C. Final Schedule.** The Receiver will investigate and resolve any
2 objections and then file with the Court and post on the Receiver's
3 website a Final Schedule. All decisions of the Receiver are final.

4 **D.** After posting the Final Schedule, the Receiver is authorized to make
5 an initial pro rata distribution, on a pro rata basis, to investors in the
6 total amount of \$1,056,435. The Receiver is authorized to make
7 additional pro rata distributions in the future in such amounts and at
8 such times as the Receiver deems appropriate.

9 Specific deadlines and time frames are set forth in detail in the Claims
10 Procedures.

11 **IV. Pro Rata Distributions are Consistent with Ninth Circuit Law**

12 The Claims Procedures provide that the amount of each investor's approved
13 claim shall be calculated based solely on the investor's "net stripped capital" which
14 is defined as funds invested in Prometheus by or for the benefit of an investor less
15 funds distributed by Prometheus to or for the benefit of that investor. The claim
16 shall not include any provision for lost or reduced account values or any specified
17 rate of return promised by Defendants.

18 The Claims Procedures further provide that distributions to investors shall be
19 pro rata, meaning that each investor's interim distribution shall be the same
20 percentage of their approved claim.

21 These procedures are consistent with the oft-recited principle that defrauded
22 investors in a Ponzi scheme case should receive ratable distributions from
23 receivership funds. *See Donell v. Kowell*, 533 F.3d 762, 776 (9th Cir. 2008)
24 ("[C]ourts have long held that [it] is more equitable to attempt to distribute all
25 recoverable assets among the defrauded investors who did not recover their initial
26 investments rather than to allow the losses to rest where they fell." (citation
27 omitted)); *see also United States v. Real Property Located at 13328 & 13324 State*
28 *Highway 75 N.*, 89 F.3d 551, 553 (9th Cir. 1996) ("[T]he equities demand[] that all

1 victims of the fraud be treated equally.” (citation omitted)); *Commodity Futures*
2 *Trading Comm’n v. Topworth Int’l, Ltd.*, 205 F.3d 1107, 1115-16 (9th Cir. 1999)
3 (affirming approval of receiver’s pro rata distribution plan); *Commodity Futures*
4 *Trading Comm’n v. Walsh*, 712 F.3d 735, 749 (2d Cir. 2013) (“A district court
5 assessing a receiver’s plan for compensation of victims of a fraudulent scheme has
6 equitable authority to treat all the fraud victims alike (in proportion to their
7 investments) and order a pro rata distribution.” (citation, alteration, and internal
8 quotation marks omitted)).

9 **V. Proposed First Interim Distribution**

10 The Receiver seeks approval to make a first interim distribution in the total
11 amount of \$1,056,435 to be made on a pro rata basis. Since the \$1,056,435 to be
12 distributed represents 9% of the total losses of \$11,738,168, each investor shall
13 receive a distribution equal to 9% of their approved claim. For example, a
14 \$100,000 investor will receive \$9,000 and a \$10,000 investor will receive \$900.

15 Exhibit B is a Receipts and Disbursements Summary for the receivership
16 through December 1, 2017. It indicates current cash of \$1,312,619.53. After an
17 interim distribution of \$1,056,435, net cash will be \$256,184, an appropriate
18 reserve for on-going litigation and other costs.

19 The timing and amount of future distributions will depend on whether, and
20 to what extent, the receivership accumulates additional assets.

21 As indicated in the Third Status Report of August 29, 2017 (ECF No. 99),
22 the most promising “asset” of the receivership remains the potential fee sharing
23 revenue from the Case Portfolio. To date, the receivership has received \$179,470
24 in such fees. More than 95% of the cases relate to the drug Risperdal and, to date,
25 there have been no settlements or verdicts in any of those cases and we have no
26 current projections as to the timing and potential amount of future fee revenues
27 from those cases.

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1 The Receiver requests that the Court approve the submitted Claims
2 Procedures, approve a first interim pro rata distribution totaling \$1,056,435, and
3 enter an order in the form of the Proposed Order submitted herewith.

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5 Respectfully submitted,

6 Dated: December 12, 2017

MCNAMARA SMITH LLP

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8 By: /s/ Andrew W. Robertson
Andrew W. Robertson
9 Attorneys for the Receiver
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